

The Consolidated Appropriations Act, 2021, (CAA) modified the eligibility and program terms for the Employee Retention Credit (ERC) for credits claimed against qualified wages in 2020 and 2021. This guide summarizes key ERC provisions and provides information to help employers determine the differences between 2020 and 2021.

Key Provisions for 2020 & 2021

Expanded Eligibility – The CAA expanded eligibility to include new businesses not in existence for all or part of 2019. In general, federal and state governments, including their political subdivisions, agencies, or instrumentalities, are not eligible to receive the ERC. The CAA amended this provision to include qualifying 501(c)(1) organizations, such as colleges, universities, or organizations working primarily in medical or hospital care.

PPP & The ERC - The CAA amended the CARES Act to permit PPP borrowers to receive the ERC retroactively for 2020 and provides the same opportunity for the program in 2021. Wages used for PPP forgiveness, up to the amount of the PPP loan, can't be used for the ERC. To calculate the amount of payroll disallowed for the ERC, PPP borrowers must use wages submitted on their forgiveness application, up to the loan amount. PPP borrowers with forgivable nonpayroll costs who only included payroll on their forgiveness application cannot reduce the payroll used in PPP forgiveness by these nonpayroll costs. PPP borrowers who submitted both payroll and nonpayroll costs on their forgiveness application can consider those nonpayroll costs when determining how much payroll to exclude for ERC purposes.

Qualified Wages – Qualified wages now include healthcare expenses, to the extent that they are excluded from gross income of the employees, and businesses may also use healthcare costs paid on behalf of furloughed employees. Both the employer and employee pre-tax portion of health plan expenses are qualified wages; however, HSA contributions are not considered eligible health plan expenses. For larger employers that do not meet the ERC definition of a small business, qualified wages include wages paid to employees when they did not provide services and exclude vacation or other leave paid pursuant to the employer's existing leave policy.

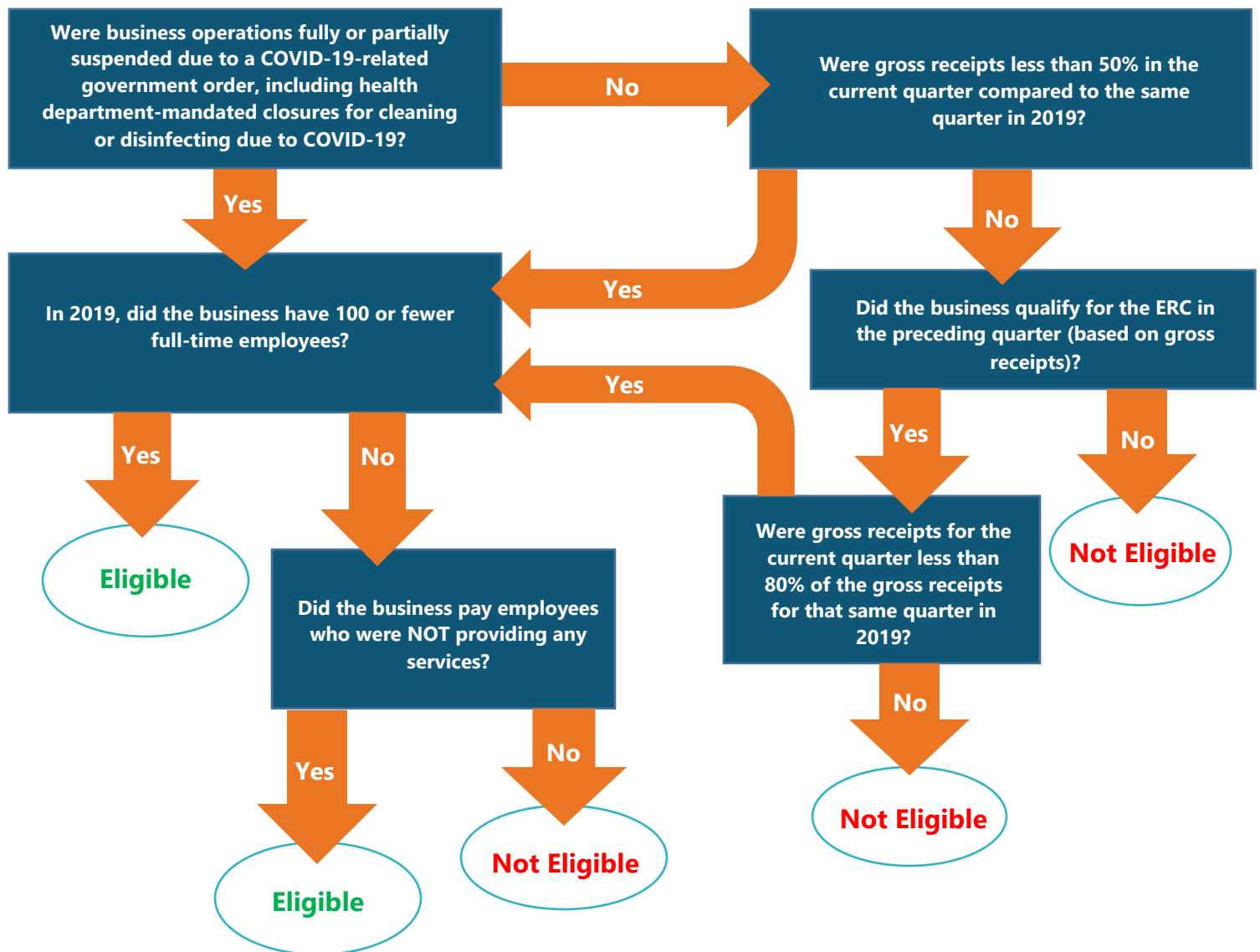
Full-Time Employees - For ERC purposes, a full-time employee is an employee who averaged at least 30 hours of work per week or 130 hours of work for the month in any calendar month in 2019.

Aggregation Rules - The ERC is calculated at the group level, including affiliates. All entities that are members of a controlled group of corporations or a group of entities under common control under the rules in section 52(a) or (b) of the IRS's internal revenue code (IRC), members of an affiliated service group under IRC section 414(m), and entities otherwise aggregated under IRC section 414(o) are considered a single employer. If one member of the group is fully or partially shut down, the entire group is eligible for the ERC.

Key Provisions Affecting 2020 & 2021 Differently

	Amended ERC for 2020	ERC for 2021
Small Business Definition	100 or fewer average full-time employees in 2019	500 or fewer average full-time employees in 2019
Credit Amount	50% refundable credit on up to \$10,000 of qualified wages, per employee, per year , or \$5,000 per employee	70% refundable credit on up to \$10,000 of qualified wages, per employee, per quarter , or \$7,000 per employee
Effective Period	Applies to qualified wages paid from March 12, 2020, through December 31, 2020	Applies to qualified wages paid from January 1, 2021, through June 30, 2021
Gross Receipts	Employers are eligible if gross receipts have declined 50% in any calendar quarter in 2020 compared to the same quarter in 2019. That eligibility ends in the calendar quarter immediately following the first calendar quarter in which 2020 quarterly gross receipts are greater than 80% compared to the same calendar quarter in 2019.	Employers are eligible if gross receipts have declined 20% in the calendar quarter compared to the same quarter in 2019 OR if gross receipts have declined 20% in the immediately preceding calendar quarter compared to the same quarter in 2019.

2020 ERC Eligibility Flowchart



2021 ERC Eligibility Flowchart

